



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

APR - 5 2000

CC:DOM:FS:RSGoldstein
SPR-119020-99

MEMORANDUM FOR CHIEF, INFORMATION OFFICER
Attn: Robert Watkin

IS

NATIONAL DIRECTOR, EDUCATION,
WALK-IN AND CORRESPONDENCE
IMPROVEMENT DIVISION
Attn: Laura Hostelley

OP:C:E:C:O

FROM:

Deborah A. Butler *Deborah A. Butler*
Assistant Chief Counsel (Field Service)

CC:DOM:FS

SUBJECT:

Request for Information Services – Request
number TCP-9-0272

By memorandum dated October 26, 1999, the National Director, Education, Walk-In and Correspondence Improvement Division, submitted a Request for Information Services (RIS), requesting that the 'Payment Due Date' and 'Notice Date' change from December 25th to December 26th in any given year. Information Services has requested our views on the Education, Walk-In and Correspondence Improvement Division's justification for the RIS and to consider the legal issue of whether the Service may release the taxpayer from their liability for interest for the additional day if the RIS is implemented.¹ This memorandum is in response to that request.

Justification for RIS

The stated justification for implementing the RIS is to eliminate the negative public reaction that results from customers having to pay a tax or receive a notice regarding a tax matter on Christmas day.

The Internal Revenue Code provides limits on when a tax can be assessed or collected or interest can be charged where no notice of the liability has been

¹Although the RIS refers to the taxpayer's liability for interest and penalties, we have not identified any current penalties or additions to tax that would be imposed or increased solely because the RIS was implemented.

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provided. See, e.g., sections 6501, 6502, and 6404(g). We have not identified any provision that requires the Service to give taxpayer's notice of a tax matter or an outstanding tax liability on a particular date. Also, inasmuch as any act required to be performed on a legal holiday is considered timely if the act is performed on the next succeeding day that is not a Saturday, Sunday, or a legal holiday, see section 7503, any notice required to be sent on December 25th, Christmas day, is timely if mailed on the next succeeding business day. Similarly, although the Internal Revenue Code generally does not require tax payments on December 25th, see sections 6151(a), 6071 and 6075, any payment due on December 25th is timely if the payment is made on the next business day. Section 7503. Thus, we do not think that the request to change the payment or notice due dates from December 25th to December 26th is legally incorrect.

Nevertheless, we do not think the justification for the RIS supports the requested change. A taxpayer is not likely to receive a notice from the Internal Revenue Service on December 25th because most notices sent by the Service are sent using registered, certified, or regular first class mail. The United States Post Office does not deliver registered, certified, or regular first class on December 25th because it is a Federal holiday. The Federal holiday also means that the Internal Revenue Service is closed on December 25th. Inasmuch all notices mailed by the Service should bear the date on which the notice is actually mailed, taxpayers should not receive a notice that is dated December 25th.

We note that, although the Internal Revenue Code generally does not require tax payments on December 25th, it is possible that some taxpayers may have entered into installment agreements in which the taxpayers voluntarily choose to have a tax payment due on that day.² If the installment agreement is monitored on IDRS, the taxpayer will receive a CP-521 notice reminding them to make their monthly payment. Inasmuch as the due date for the payment was established by mutual agreement with the taxpayer, we do not think that these notices are likely to generate the negative reaction that the RIS is intended to eliminate, and, as stated above, if the payment is made on the next business it will be considered timely. See section 7503. While other notices that request payment or other action by December 25th may be routinely generated (*i.e.*, if masterfile is programmed to request payment 10 days from the date on which the notice is issued, a notice issued on December 15th will require payment on December 25th), a notice will not include a due date of December 25th unless the program is run and the notices are

²When an installment agreement is executed, the taxpayer is asked to select any day between the 1st and the 28th, inclusive, as the day of the month on which the taxpayer's payments will be due under the installment agreement. Thus, a payment will not be due under an installment agreement on December 25th unless the taxpayer voluntarily selects the 25th as his or her payment due date.

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mailed on the date that would require payment by December 25th. Thus, the Service may accelerate or delay running these programs by one day, resulting in a due date other than December 25th, without the need to implement a RIS.

While we do not think it is necessary to implement the RIS for the reasons stated above, we also note that the RIS is limited to December 25th and does not address other Federal or religious holidays. Thus, if implemented, the request may give rise to claims of disparate treatment by taxpayers based on religion. The negative publicity surrounding such claims is likely to equal, and possibly exceed, the negative publicity that the RIS was intended to eliminate.

Interest

Section 6601(a) provides that interest **shall be paid** on any amount of tax imposed by the Internal Revenue Code if such tax is not paid on or before the last date prescribed for payment. The period for which interest shall be paid is from the last date prescribed for payment to the date that the tax is paid. Section 6601(a). Thus, except as otherwise provided by statute, the Service may not forgive a taxpayer's liability for interest if there is or was an underlying, unpaid liability for tax.

Two statutory provisions authorize the Service to accept less than the full amount of interest: Compromises under section 7122 and interest abatements under section 6404. The Service's authority to compromise cases under section 7122 is not relevant here. A case generally may be compromised if there is doubt as to liability or doubt as to collectibility. Treas. Reg. § 301.7122-1T(b)(2) and (3). If there is no doubt as to liability or collectibility, a case may be compromised if, upon consideration of all facts and circumstances, including the taxpayer's record of overall compliance with the tax laws, acceptance of the taxpayer's offer would promote effective tax administration. Treas. Reg. § 301.7122-1T(b)(4). Inasmuch as the RIS would compromise the liability without the consideration of the taxpayer's specific case, including whether there was a genuine dispute as to liability, the taxpayer's financial situation, and his or her record of compliance, the factors permitting compromise are not present.

Pursuant to section 6404(c), the Service is authorized to abate any liability with respect to a tax if the administration and collection costs involved would not warrant collection of the amount due. Treasury Regulation § 301.6404-1 provides that the Commissioner may issue uniform instructions to district directors authorizing them, to the extent permitted in such instructions, to abate amounts the collection of which is not warranted because of the administration and collection costs. On November 12, 1992, the Acting Commissioner approved the criteria for the abatement of small outstanding tax balances. The criteria approved by the Acting Commissioner authorizes the abatement of debit balances of \$[REDACTED] or less. This authorization resulted from a request made by the Assistant Commissioner

(b)(7)(E)

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(Returns Processing) for authority to abate "tax and penalties" in situations where, other than the modules under review, the taxpayer is compliant in his/her tax obligations and the pursuit of collection activities is not cost effective. Thus, it is not clear to us that the Commissioner was authorizing the abatement of interest pursuant to his authority to abate all small outstanding tax balances under section 6404(c).³

The Service, however, may abate the assessment of interest on all or any part of a deficiency in tax attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Service, who was acting in his or her official capacity, in performing a ministerial or managerial act. Section 6404(e)(1). Similarly, the Service may abate the assessment of interest on all or any part of a payment of tax as described in section 6212(a) to the extent that any unreasonable error or delay in such payment is attributable to an officer or employee of the Service being erroneous or dilatory in performing a ministerial or managerial act. I.R.C. § 6404(e)(2). For these purposes, an error or delay shall be taken into account only if no significant aspect of such error or delay can be attributed to the taxpayer involved, and after the Internal Revenue Service has contacted the taxpayer in writing with respect to such deficiency or payment. Section 6404(e).

A ministerial act is a procedural or mechanical act that does not involve the exercise of judgment or discretion and that occurs during the processing of a taxpayer's case after all prerequisites of the act such as conferences and reviews by supervisors, have taken place. Treas. Reg. § 301.6404-2(b)(2). A managerial act is an administrative act that occurs during the processing of a taxpayer's case involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel. Treas. Reg. § 301.6404-2(b)(1). Interest, however, is not abated for delays resulting from general administrative decisions. Id.; see, also, H.R. 104-506, 104th Cong., 2^d Sess., 27 (1996), reprinted in, 1996-3 C.B. 75. Thus, while interest may be abated because of a decision not to reassign the audit of the taxpayer's return although the revenue agent assigned to the case is granted extended sick leave, it may not be abated due to a delay in the Service's implementation of an improved computer system.

A decision to change all notice or payment due dates to reflect December 26th is a general administrative decision, not a ministerial or a managerial act. Thus, section 6404(e) does not permit the Service to abate interest in this case. Accordingly, we

³We note that the RIS would forgive all interest accruals for the one day period and is not limited to those amounts where balance due was small. Thus, the RIS would not be authorized under section 6404(c) to the extent that the interest was not *de minimus* and the costs to collect to such interest was not unreasonable under the circumstances.

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do not think the Service is authorized to release the taxpayer from his liability of interest for the additional day if it changes all notice and payment due dates from December 25th to December 26th. Therefore, if the RIS is implemented, and the notice sent to the taxpayer is changed to reflect a payment due date of December 26th, the Service is required to compute interest up to that date.

If you have any questions regarding this matter, please contact Richard Goldstein at (202) 622-7880.